

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

EXACTECH MASTER CASE

Master Case No. 2022 CA 002670

Division: J

This Order Applies to All Cases

**AMENDED CASE MANAGEMENT ORDER FOR BELLWETHER TRIAL
SELECTION PROCESS**

This Court having considered the Parties' Joint Brief in Support of Revised Joint Florida and MDL Bellwether Unified Trial Plan and Request for Hearing (filed Sept. 1, 2023) and this Court's July 6, 2023 Case Management Order for Bellwether Trial Selection Process, having reviewed the present record in this matter and after hearing argument of counsel, and for good cause shown finds that an amendment to this Court's Case Management Order for Bellwether Trial Selection will assist in the timely resolution of cases and hereby enters this Amended Case Management Order which shall govern the selection and scheduling of trial of representative cases.

Therefore, it is hereby **ORDERED AND ADJUDGED** that the Court hereby adopts the Revised Florida Bellwether Trial Plan, set forth below.

1. All hip cases brought on behalf of revised, non-bilateral Florida residents where a Plaintiff Fact Sheet has been substantially completed by August 31, 2023, and all hip cases brought on behalf of revised, non-bilateral Florida residents which were filed by July 1, 2023 (regardless of Plaintiff Fact Sheet status) shall constitute the group of cases from which the **Florida Preliminary Pool** shall be selected.

2. The **Florida Preliminary Pool** shall consist of 24 cases – 16 randomly selected, 4 plaintiff picks, 4 defense picks involving hip plaintiffs from Florida as defined in paragraph 1 above.

3. Non-Revision (plaintiff has an Exactech device but it has not been revised as of August 31, 2023) and Exactech Bilateral (plaintiff has an Exactech device implanted in both the left and right hips) Cases will not be included in the **Florida Preliminary Pool**.

4. **Deadline for Discovery Forms:** The deadline for production of these discovery instruments will be accelerated as follows for the 24 cases in the Florida Preliminary Pool if the standard deadlines have not already passed.

a. **Plaintiff Fact Sheet (PFS) Deadline:** The PFS is due for as provided for in the Case Management Order dated April 26, 2023, or 15 days after selection into the **Florida Preliminary Pool**, whichever is shorter,

b. **Time to Cure Plaintiff Fact Sheet (PFS) Deficiencies:** Cure time for any outstanding deficiencies is 30 days after the deficiency notice is given.

c. **Defendant Fact Sheet (DFS) Deadline:** The DFS is due as provided for in the Case Management Order dated April 26, 2023, but if that time has not yet run, then the time remaining from service of the PFS.

d. **Time to Cure DFS Deficiencies:** Cure time for any outstanding deficiencies is 30 days after the deficiency notice is served.

5. In the interest of efficiency, for non-pool cases the parties agree to stand down on the requirements for PFSs and DFSs for a period of 90 days from the selection of the **Florida Preliminary Pool**.

6. Random Sampling. The parties shall agree on a list of eligible hip cases for bellwether trial consideration by October 20, 2023. The parties shall sequentially number each of the lists, assigning each Plaintiff a unique number, starting with the number 1. On October 27, 2023, representative counsel for Plaintiffs and Defendants shall meet in person (or via zoom if the parties agree that the random selection process may be conducted remotely) and use a random number generator to identify the sixteen (16) hip cases in the initial bellwether pool. Specifically, the parties will randomly select hip cases using <http://www.random.org> to generate random numbers within the range of unique numbers assigned to the bellwether pool.

7. On December 1, 2023, at 4 p.m. eastern time, Counsel shall simultaneously exchange the 4 plaintiff picks and 4 defense picks which come from the remaining pool. In the event the parties select any of the same cases, there will be no replacement picks. The parties shall then submit a Joint Notice of Initial Bellwether Pool which identifies the initial

bellwether pool.

8. Strikes within Florida Preliminary Pool: For the 24 cases in the **Florida Preliminary Pool**, on December 15, 2023, at 4 p.m. eastern, the parties shall exercise their strikes; each side gets eight strikes, taking the pool down to eight. In the event the parties strike the same case(s), there will be no replacement strikes.

9. Court Selection of Trial Cases: Parties shall brief the remaining eight cases in the **Florida Preliminary Pool** and submit those briefs to the Court 14 days after the completion of the strike process. Thereafter the Court will select four cases for trial, including the order of the trials, which will comprise the **Trial Pool**. Following the Court's selection of the **Trial Pool**, case-specific depositions shall commence in accordance with the schedule set forth below in paragraph 13.

10. Bellwether Trial Dates: Trial of the four Trial Pool cases shall be in October, November and December 2024 and January 2025 in the order selected by the Court.

11. All existing trial dates for cases in this consolidated litigation are vacated.

12. Discovery coordination and deadlines. The parties will use best efforts in good faith to coordinate Discovery from the Exactech Defendants in order to maximize efficiency and avoid duplication. The deadline below recognizes the Parties' and the MDL's joint efforts to conduct general liability discovery regarding both knees and hips.

- a. All fact discovery must be completed (including disclosure of medical records for filed cases) by August 30, 2024.

13. BELLWETHER CASE DISCOVERY

- a. **Plaintiff Supplemental Fact Sheets:** Plaintiffs' Supplemental Fact Sheets are due within 60 days of selection.
- b. **Core Depositions:** Core Discovery Depositions (plaintiff, spouse/partner, implanting and revising surgeons and up to 3 case specific fact witnesses) shall be completed by February 29, 2024
- c. **Plaintiffs' Trial Pool Expert Report Disclosures:** Plaintiffs shall disclose experts and serve reports for the **Trial Pool** cases on or before April 30, 2024
- d. **Defendants' Trial Pool Expert Report Disclosures:** Defendants shall disclose experts and serve reports for the **Trial Pool** cases on or before June 30, 2024.

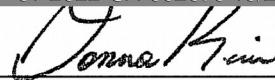
- e. **Rebuttal Experts:** Rebuttal expert reports are due July 15, 2024
- f. **Plaintiffs' Expert Depositions:** The depositions of plaintiffs' experts disclosed for the **Trial Pool** cases shall be completed on or before August 31, 2024
- g. **Defendants' Expert Depositions:** The depositions of Defendants' experts disclosed for the **Trial Pool** cases shall be completed on or before September 30, 2024.

14. RESUMPTION OF TRIALS AFTER OPPORTUNITY FOR MDL BELLWETHERS

- a. If by February 29, 2024, the MDL Court has not initiated scheduling bellwether knee trials of its own, this Court will schedule a Case Management Conference to recommence scheduling all remaining knee and hip cases for trial dates to take place beginning in April 2025 and continuing each month thereafter.
- b. The parties will meet and confer at least 20 days prior to the Case Management Conference and submit a proposed plan at least 10 days prior to the Case Management Conference setting forth the preferred order of the cases to be scheduled for trial beginning April 2025.

Done and Ordered in Chambers in Gainesville, Alachua County, Florida on this Thursday, October 26, 2023.

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Donna M. Keim, Circuit Judge
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above has been served by e-portal or by First Class US Mail on this Thursday, October 26, 2023.

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A handwritten signature in black ink, appearing to read "Theresa Hall", written over a horizontal line.

Theresa Hall, Judicial Assistant
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